

REMARKS

Jeffrey J. Barclay (Reg. No. 48,950) and Eric Keller thank Examiner Heidi M. Riviere for the courtesy of the telephonic interview held on September 4, 2008. The substance of the interview included a discussion of the claims 1 and 14 and cited U.S. Patent No. 6,574,465. The rejections of claim 1 under 35 U.S.C. §§ 101, 112, and 103 as well as possible amendments to claim 1 were discussed. No agreements were reached.

Claims 1-36 are pending, in which claims 1, 18, 35 and 36 are independent. Claims 1, 18, 35 and 36 have been amended. No new matter has been introduced by way of these amendments. Favorable reconsideration of the action mailed on July 7, 2008 is respectfully requested in view of the forgoing amendments and the following comments of the Applicant, which are preceded by related comments of the Examiner in small bold type:

**Claim Rejections - 35 USC § 101**

Claims 1 and 18 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. The claims as written are missing key steps. Without these steps the meaning and definition of the limitation is lost and remains unclear. These claims state “determining if a user has access to a data source” however Examiner is unclear who or what makes this determination and what the data source is. These claims further disclose “identifying one or more upgrade packages that would allow the user to access the data source”. These claims as written fail to proclaim what happens when the package is identified. Therefore, the claims as described with missing steps make it difficult to operate the invention.

Not to concede the Examiner’s position, and to expedite prosecution, independent claims 1 and 18 have been amended and satisfy the utility requirement. As put forth in the originally filed application, practical applications include helping a user to save money by avoiding the purchase of redundant subscriptions. (*See e.g.*, page 2, lines 14-18.) Further, as suggested by the Examiner, independent claims 1 and 18 have been amended. The Applicant requests that the Examiner reconsider the rejection of amended claims 1 and 18 under 35 USC § 101.

**Claim Rejections - 35 USC § 112**

Claims 1 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims as written are missing key steps. Without these steps the meaning and definition of the limitation is lost and remains unclear. These claims state “determining if a user has access to a data source” however Examiner is unclear who or what makes this determination and what the data source is. These claims further disclose

“identifying one or more upgrade packages that would allow the user to access the data source”. These claims as written fail to particularly point out or distinctly claim what happens when the package is identified.

As mentioned above, independent claims 1 and 18 have been amended to expedite prosecution and for clarification. As suggested by the Examiner, claims 1 and 18 have been amended. The Applicant requests that the Examiner reconsider the rejection of amended independent claims 1 and 18 under 35 USC § 112, second paragraph.

*Claim Rejections - 35 USC § 103*

**Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilliam et al. (US 7,206,765 B2) (hereinafter “Gilliam”) in view of Marsh et al. (US 6,574,465 B2) (hereinafter “Marsh”).**

Independent claims 1, 18, 35, and 36, as amended, recite “determining an upgrade cost associated with each of the identified upgrade packages, based at least in part upon a value associated with a list of authorizations possessed by the user.” Neither Gilliam nor Marsh, individually or in combination, is understood to disclose or suggest this element of the independent claims.

Rather, Gilliam describes a method and system for “enforcing rights expressions specifying manners of use of an item.” (Gilliam, col. 3, lines 7-8, 20-21.) The reference deals with comparing rights expressions to determine whether access will be granted or denied. (Gilliam, col. 41, line 52 – col. 42, line 3.) As can be clearly seen in Fig. 9, the enforcement process of Gilliam ends when access is either granted or denied. (Gilliam, Fig. 9; col. 41, line 52 – col. 42, line 3.) Gilliam appears silent in regards to executing operations after access is denied. In particular, Gilliam is not understood to describe or suggest determining an upgrade cost, based at least in part upon a value associated with a list of authorizations possessed by the user.

Marsh describes “a system and method for analyzing wireless communication data for determining an optimal wireless communication service plan.” (Marsh, Abstract.) Marsh’s system analyses “periodically loaded wireless service usage of a given account or subscriber, and/or group of accounts or subscribers ....” (Marsh, col. 8, lines 31- 33.) Specifically, Marsh describes analyzing “call detail records (CDRs),” to assess three parameters: “when calls are made/received,” “what kind of calls are made or received,” and “where calls are made or

received.” (Marsh, col. 9, lines 1- 30.) Marsh describes determining a cost associated with alternative cellular plans by estimating the cost of each plan based on this usage data. (Marsh, col. 9, lines 31- 39.) However, Marsh is not understood to disclose or suggest determining an upgrade cost, based at least in part upon a value associated with a list of authorizations possessed by the user.

For at least these reasons, neither Gilliam nor Marsh, individually or in combination, are understood to disclose or suggest this element of amended independent claims 1, 18, 35, and 36 and these claims are allowable.

Dependent claims 2-17 and 19-34 are allowable over Gilliam and Marsh, individually or in combination, at least for the reasons discussed with respect to independent claims 1 and 18. Although it is believed that the dependent claims define patentably distinct features, given the distinctiveness of the respective independent claims, the dependent claims are not discussed here in detail.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, the entire application is now believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

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Page : 12 of 12

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Please apply any other charges or credits to deposit account 06-1050 making reference to attorney docket number 14618-009001.

Respectfully submitted,

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